

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LEON DAVIS,

Plaintiff,

Case Number: 2:09-CV-13912

v.

HONORABLE DENISE PAGE HOOD

VADLAMUDI SEETHA, *Dr.*,
ALFRED JONES, *Administrative*
Assistant, and MDOC

Defendants.

ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge Charles E. Binder's Report and Recommendation [**Docket No. 5, filed on November 9, 2009**]. No objections have been filed, however, Plaintiff filed a document entitled "Amended Complaint" [**Docket No. 6, filed on November 16, 2009**]. The Magistrate Judge recommends dismissing this case *sua sponte* for failure to state a claim upon which relief may be granted.

With respect to Plaintiff's claims regarding Dr. Vadlamudi Seetha's medical treatment, the Magistrate Judge stated that Petitioner has failed to state a claim under the Eighth Amendment, because he acknowledges that he received medical attention, but disagrees with the physician's treatment decisions. Regarding Defendant Alfred Jones, the Magistrate Judge stated that Defendant Alfred Jones' denial of Plaintiff's internal grievance fails to state a constitutional claim. Finally, with respect to Defendant MDOC, the Magistrate Judge recommends Defendant MDOC be dismissed, as the Sixth Circuit has repeatedly held that the MDOC is absolutely immune from suit pursuant to the Eleventh Amendment. This Court finds that the Magistrate

Judge reached the correct conclusions for the proper reasons.

Even if the Court were to construe Plaintiff's Amended Complaint as objections to the Report and Recommendation, Plaintiff's Amended Complaint does not substantively address the Report and Recommendation. Plaintiff's original Complaint was filed on October 5, 2009. Pursuant to Federal Rule of Civil Procedure 15(a)(1), Plaintiff's Amended Complaint is untimely as it was filed more than twenty-one (21) days after the original Complaint was filed. Plaintiff's Amended Complaint is also improper under Rule 15(a)(2), as Plaintiff neither received the opposing party's consent nor obtained leave from the Court to file an Amended Complaint.

For the reasons set forth above,

IT IS ORDERED that Magistrate Judge Charles E. Binder's Report and Recommendation [**Docket No. 5, filed on November 9, 2009**] is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel [**Docket No. 7, filed on November 19, 2009**] is deemed MOOT.

IT IS FURTHER ORDERED that this cause of action is DISMISSED *sua sponte* without prejudice.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: July 30, 2010

I hereby certify that a copy of the foregoing document was served upon Leon Davis, Reg. No. 110684, Pugsley Correctional Facility, 7401 E. Walton Rd., Kindsley, MI 49649 and counsel of record on July 30, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager